

A Briefe
DECLARATION

For

What manner of special Nufance concerning private dwelling houses, a man may have his remedy by Assise, or other Action as the Case requires.

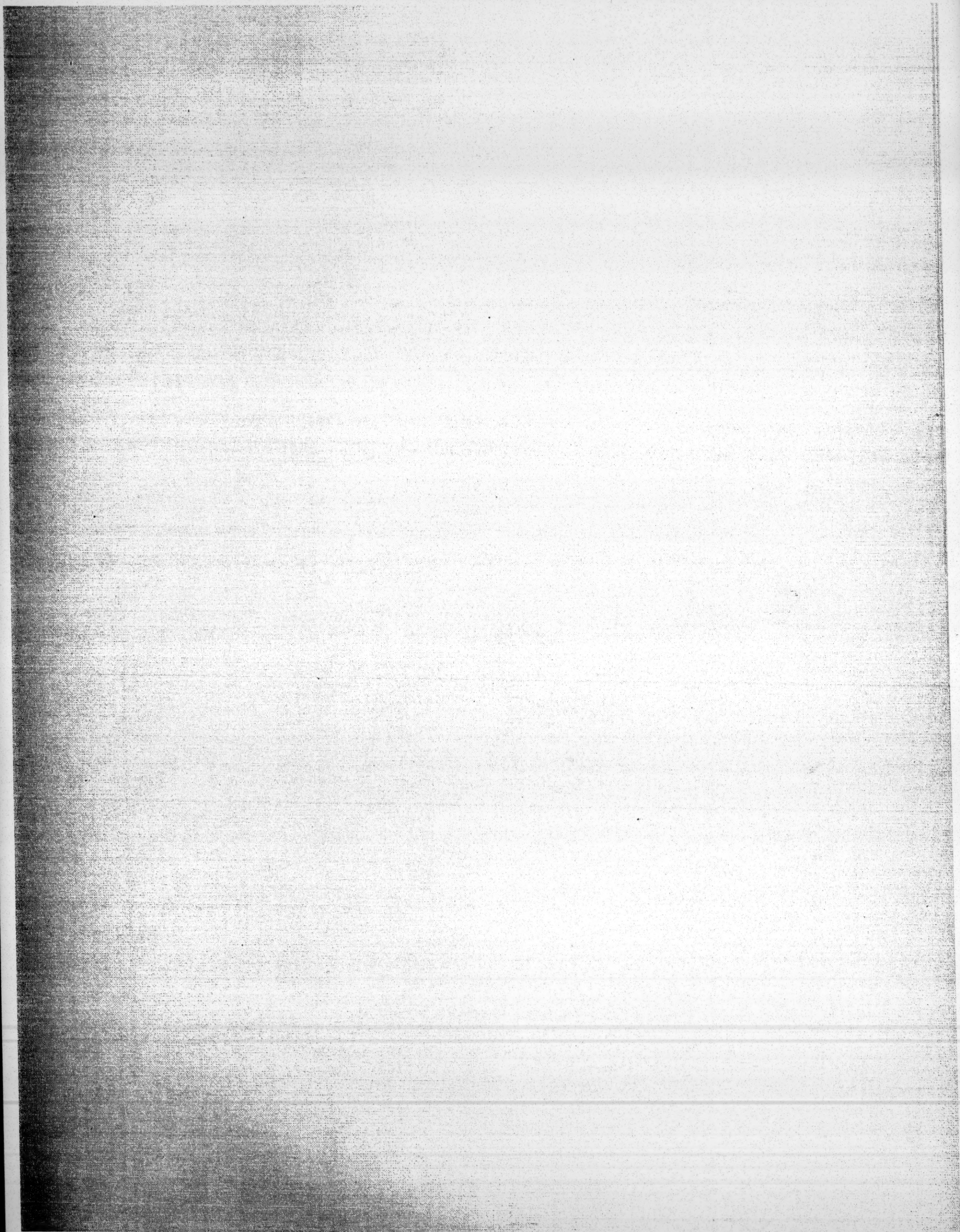
Unfolded in the Arguments, and Opinions of foure famous Sages of the Common Law; together with the power, and extent of customes in Cities, Townes, and Corporations, concerning the same: together with the determination of the Law, concerning the commodity, and use of houses, and their appurtenances,

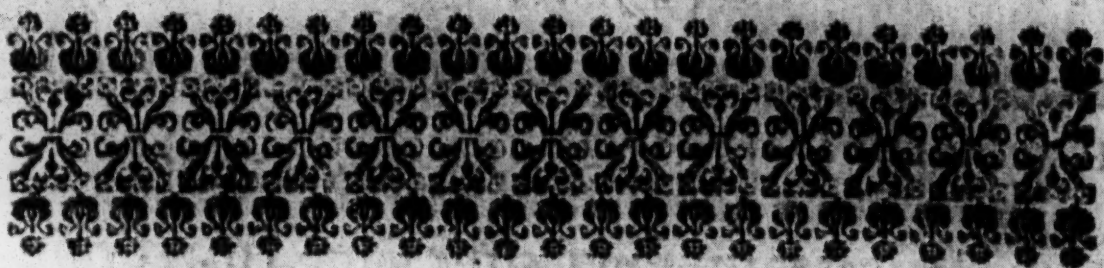
Whereunto is added,

The Iustices of Assise their Opinion, concerning Statute-law for Parishes, & the power of Iustices of Peace, Churchwardens, and Constables; and to know what they are to doe concerning Bastards borne in their Parishes, reliefe of the poore, and providing for poore children, what remedy for the same.

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The Arguments, and opinions of foure famous sages of the Common Law touching the power, and extent of customes of Cities, Townes, Corporations, and Inheritances, together with the determination of the Law concerning the commodity, and use of house, with their appurtenances, and wherein an action may be maintainable concerning the same, and wherein not.



Man hath a house, and the windows thereof open into an other mans house, whether hee may build a house, so as to stoppe up the same lights, or not: concerning which, I purpose to shew you my opinion, and likewise to shew unto you the necessity and use of houses.

*Mr. Monsons
argument.*

The first, and chiefe use of an house is to defend man from the extremity of the winde, and weather. And by the receipt of comfortable light, and wholesome ayre, into the same to preserve mans body in health.

Therefore whoso taketh from man so great a commodity as that which preserveth mans health in his castle, or house, doth in a
B manner

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manner as great wrong as if he defeised him altogether of his freehold.

As if I have a Mill, and an other will turne away the water running to the same, I may bring an Assise against him.

So, if I have a Pipe, which conveyeth water unto my house through the ground of an other man, and he will cut my pipe, I shall have an action against him: In like manner who so stoppeth my light, is the cause that no aire can enter into my house, without which no man can live, and a house lacking light, is rather a dungeon then a house.

If one who hath a horrible sicknesse bee in my house, and will not depart, an action will lie against him, and yet he taketh not any aire from me, but infecteth that which I have.

So if one cast filth neere unto my house, I may bring my action against him. If a man build so high that his house droppeth on my house, I shall have remedy against him.

And though light, and ayre be common, yet if by any mans owne acte they may bee made private, they may not then bee taken from him, and if they be, he shall not be without remedy.

This appeareth by Hawkes, and Deere, which be *feræ nature* yet if by mans industry they are made tame, the owner will thereby gaine property in them: but peradventure it will bee sayd, The soile is his owne, and it is *Dammum absq;*

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absq; injuria, what then? though it be his owne, he must so use it, that he hurt not his neighbour.

As if a man had a pond of water, and will suffer it to drowne his neighbours land, he shall have remedy against him.

If a man be bound to repaire the bankes of the sea that it drowne not the land adjoyning, and so doth not, but the land is drowned; an action lieth against him. You may perhaps say there is plenty of light remayning, this notwithstanding our action will lye very well, for the taking away, or impairing part thereof. As an action was brought *quare ar&avit*, and 2. H. 4. where a man had a way and an other plowed the same, and it was thought there that an action would very well lie, and yet the way remained. If I have common in your Land, and you will plough part of the same Land, I shall very well maintaine an action against you. So it is of Common of Estovers, and piscary: And yet in all these cases, the whole is not gone, but some part remaineth. This proveth that though he hath not stopped the whole light of the house, yet for that he hath stopped parcell, an action is very well maintainable, but if you had said, that on the same side there had beene plenty of light, it might have better stood with reason.

As touching your custome, whereby a man may stoppe his neighbours lights: I thinke this

B. 2

is

is rather *malus usus*, then any custome: for as I have learned of Mr. Hales, a custome is thus defined, *Consuetudo est ius non scriptum nunquam repugnans rationi naturali*, and therefore if any custome swerue from reason, and naturall equity, it is but *malus usus*, and for that to be abolished, for by entendment, and consideration of the law, and reason, every custome had a reasonable beginning, as that case in 35.H.6. of selling Jewels in Cheapside may have a reasonable beginning. In like manner the custome of *Gavelkinde*, that sonnes shall equally inherit the Lands of their fathers. Such is the custome, that if a woman marrie without licence, that she shall loose her dowry.

So is it also of the custome that one towne may enter Common with an other. All these, and such like may well bee thought to have a reasonable beginning.

Otherwise it is, where by intendment their beginning cannot be thought reasonable.

As that a man shall pay reliefe, when that he shall marry his daughter. And as the custome is in Mich, 35. H. 6. fo. 31. of the pledging of goods: So it is of the custome, to arrest a man before the day of payment. In like sort in 2. H. 4. that the tenant shall not put his beasts into the Common, before the Lord hath put in his, which peradventure hee will never doe, so it is 10.H.6. If the Major of a towne will prescribe to impound all beasts which shall be
damage.

dammage fesonet in his owne pound, and there to keepe them till he be satisfied as he list, or if he prescribe to use, and occupie the same beasts howsoever he pleaseth.

In 2. R. 3. and 22. E. 4. one demanded whether it were a good custome, that if the Mayor of a towne suspect a man, that he may arrest and imprison him 3 daies: this was thought no good custome, but to be most abhorring, and dissonant from reason. And therefore forasmuch as houses bee necessary, and cannot bee without light, and ayre, their beginning was lawfull, necessary, and reasonable, but that a man might stoppe up his neighbours lights, was never necessary, neyther had lawfull, or reasonable beginning, neither at any time obtained the force of a law, or custome, for in K. Henry the 2. his time, it was but a constitution in *London*, & not any custome, or law; and therefore never allowed, or confirmed by Parliament, for *Magna Charta Ca. 9.* did confirme such old liberties and customes as *London* had at that time: And therefore if this were not any law or custome at the time of the making of that statute, it neyther was nor could be confirmed by the same, for the more generall Statutes shall have a reasonable construction. As the Statute that doth prohibite maintenance, shall have a construction, for lawfull maintenance is not thereby prohibited. The like law is that where it is said, that a fine shall bee a Barre to a *feme*

coverte, this is to be understood of a good, and lawfull fine, so this confirmation by Parliament of customes, and liberties of *London*, shall bee intended a confirmation of all their good, and lawfull customes, and not of unreasonable, or wrongfull usage, such as in 27, h. 6. if the house of tenant for terme of yeeres decay, that then he shall pay no rent, &c. But if your custome were then good, and so confirmed by Parliament, yet the words thereof may not bee stretched to our case, the words are *visus fenestrarum*, and the Civill law sayth, a man may *estop visum*, and not *lumen*, *lumen est descendens de cælo*, *visus est meus prospectus ad terram*.

And our law sayth, *petit visum terre*, And *visus* and *lumen* differ. But Sr you cannot in this case defend your selfe both by the Common law and custome too. For you ought absolutely to trust to the one of them, and if you had plead thus by way of Barre, your plea without all doubt would have beene double.

As if a man will pleade affeasement with warrenty, and rely not on the warrenty, this plea is double. So in the case at the Barre, you plead both the Common law, and the custome, and your plea is double, and therefore for all these causes I thinke the plaintife ought to recover.

Mr. Plowden.

Mr. Plowdens
Argument.

Albeit it hath beene alleaged, that the windows

dowes have beene time out of memory there, and the lights ancient, it is all one, as if the house had beene built at this day. Put the case there is a pale betwixt your ground and mine, and you build to the uttermost part of mine, by your first building I am bridled and stopt of my building; And in the Country whoso maketh a hedge, will make a dike in the uttermost part upon his owne land. So he that maketh a parke, will leave ground out of the same compassse without the pale for his keeper to walke about it for there hee may better heare if any body be there within, then if he were within himselfe, And this is called free-bownd. If a man build his house so high that it droppeth on mine, an action will very well lie, for there is a manifest hurt and wrong done unto me: but 22. H. 6. where the *Prior* of St. Edees had three Mills, an other man built an other by them, hee could not have any remedy for this. But if any of his tenants which held of him by grinding at his Mill grinde at the new Mill, the *Prior* may have an action against him, for he whose the land is, might use the same for his greatest commoditie and gaine.

If a man cut downe Trees which fall upon an other mans land, he shall have his action; otherwise it is, if a Tree fall by reason of winde. So in our case: of our owne soyle we may make the best as in 12. H. 8. a man had a pond, and let the same runne out, whereby the next dwellers
land

land was drowned, this was but *damnum absq;*
injuria, wherefore no action would lie. In 4. E. 3.
 a man had a Limnekilne, which destroyed the
 fruit of his neyghbour, who maintained his
 action, for in that case this taketh place, *sic*
utere tuo, ut alienum non laedas; And Mr. Rastall
 sayth in his booke, if a man have a Dye-house,
 & the water which runneth to his house, killeth
 the Fish of an other, an action lyeth. If a man
 cast filth under my wals, I may punish him for
 it. And in the 46, E. 3. The *Prior of Buckburst*
 had a sluice, whereby Salmons came in, and one
 stopped the same, wherefore he had his action.
 Like whereas one cutteth away the water,
 which runneth to my Mill, for the prooffe
 whereof Mr. *Reynolds* put a case out of 19. E. 3.
 where an Ass: was brought for two things, one
 because hee had levied a house to stoppe the
 light; an other, because hee could not reparaire
 the same: There it was thought that no action
 would lie, because he might have remedied this
 in the beginning when he built his house. And
 the case was in 7. E. 3. in the last poynt, & there
 the lawyer sayd that he might have left space
 enough in his owne Land, and the party was
 nonsuted. *Horwoods* report hath two verses,

Sape recordare si debes edificare
Vt poteris stare cum eam vis reparare.

But you aide your selfe with a prescription
 that

that you have had light time out of minde, this is no good prescription, for a prescription must be against some party. But this is against God. You say further, that the other had no house, which is not good, for a prescription must be in the affirmative, and this is in the negative, & so saith *Prison* in 22. H. 6. that a man cannot prescribe in the not having a house. But admitting it to be the usage.

An usage is generall, & a constitution speciall in 12. E. 4. A diversity is taken betweene usage, and custome, for that a custome is a thing disagreeing from the Common law, but not contrary, & also it would not be beautifull that Citties should have any voyd places, in them, and it would be most honourable that they should be populous. And therefore was there a Statute made 27. H. 8. *ca. primo*, that there should not be any voyd places in divers Citties, also houses are necessary for the sustenance of man, in 22. E. 4. there is a custome that if a man plough his land, hee might turne his plough upon an other mans land: and this was thought a good custome for the favour of tillage, much more our case of building is to be favoured. 8. E. 4. the custome is that a Fish-man may drive stakes into an other mans ground to drie his nets, which was allowed for a very good custome. Likewise 15. E. 2. one prescribed that when the Hay was carried out of a certaine Medow, that he should occupy the land untill our Lady day, which was allowed by the Court. So a
C man

man may prescribe to have Common of esto-
 vers in another mans Land, and to cut them
 downe himselfe. The Lord in ancient demesne
 prescribed, that if the villaine of another
 Lord remained a yeere and a day in ancient de-
 mesne, that then it shall not be lawfull for his
 Lord to take him from thence. In like manner
 one may prescribe to have gravell in my Land,
 and all these customes stand very well with rea-
 son. If I have a way, and another man plow up
 the same, I cannot have an action on my case,
 but I must have an ass: and so is the booke in 2.
 H. 4. Mr. *Fleetwood* sayth that all customes
 must stand with reason, And in 5. E. 4. it is
 sayd, that albeit all customes are confirmed,
 yet they must be examined, by the rule of
 reason, as the custome of Gavelkinde standeth
 with reason. The Statute that giveth a writ of
 ravishment, *de Gard to Gaurden* in soccage shal be
 extended to the Mayor, and Aldermen of *Lon-
 don*, to give them like remedy which was confir-
 med by 1. E. 3. Also the statute that no man shall
 give lands in Mortmaine, yet Citizens and free-
 men of *London* may give lands in Mortmaine
 by their custome, which custome is also
 confirmed by act of Parliament. As for the
 doublenesse of the plea I will not say any thing,
 for that it is not any Iustification, but onely for
 to diminish the damages, if perhaps it be found
 against us. And therefore upon the whole matter
 I thinke the plaintiffe ought not to recover in
 this action. I thinke the contrary, and first I will
 consider these foure things. First,

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First, whether such buildings, *ex opposito*, be a nuisance by the Common law. Mr. Wray's
Argument.

Secondly, whether this custome be a good custome.

Thirdly, whether such kinde of buildings be for the beautifying of the City.

Fourthly, whether the sayd confirmation by Parliament make this custome good, or not.

As touching the first matter, the nuisance which is supposed to be in stopping up of windows in the south part of an house, I conceive is a nuisance by the Common law, for by the Common law, one shall not hurt the freehold of another, and no greater hurt, grievance, or damage can hee done to any mans freehold, then to take away the light and ayre thereof, which is comfortable, and commodious for him, for when this light, and ayre are taken from him, his house remaineth as a dungeon. And divers cases there bee where a man taketh away from an other not the thing it selfe, but the commodity of the thing, and for that he shall have his remedy by action: as if I have a water running through your ground unto my Mill, and you will turne away the course thereof, or stop the same, I may bring an assise 9. E. 3. pla. 19. yet I will confesse, that if an other build a Mill by my Mill, I may not have any action, as 22. H. 6. for it is *damnum absque injuria*. So it is in 2. H. 4. in the case of the schoole *eadem ratio*. But if any ought to grinde at my
C 2 Mill,

Mill, and another will hinder them, an action lyeth 9. H. 6. fo. 45. where the Prior of St. Bartall had a faire, and one interrupted the comers thereto, whereby his toll was impaired, and yet not his faire, but the profit of his faire taken away, and he had remedy. So in our case he hath not medled with our freehold, and yet hath hee hurt our freehold. So in 4. E. 2. 13. E. 3. If I have a faire, and the King will grant another, if my faire bee impaired, by this I shall have an action, and so of a ferry, and the reason is, because a man is compellable to mainetaine his faire, ferry, or market, and if he doe not, it is punishable in a leete. But of a schoole, otherwise it is, for that a man is not bound to maintaine it, but houses in Citties men are bound to mainetaine, and that by Statute, otherwise they may incurre the punishment. 18. E. 3. one built his house so high over mine, that the raine dropped from his upon mine, and it was thought there that an action was mainetaineable, yet that hurt might have beene amended *à fortiori* in our case where the hurt is perpetuall, and cannot be amended. And if for a way an action lyeth, as it is in the 42. E. 3. much more for an hurt to our health, which above all things men have regard unto, for the prooffe whereof we have a writ in the register *de leproso amovendo*. Likewise the selling of corrupt meate, whereby mens bodies may sustaine harme, is punishable in a Leete, which proveth

proveth that the Common law hath regard un-
 to the health, and welfare of every private man.
 There is a case in 4.E.3.lib.assize.3. where one
 built a Limekilne, and his neighbour was annoy-
 ed by the smoke thereof, and had his remedy. If
 a man shall bee punished for smoke, which may
 be avoyded, and dureth but at times, what shall
 we thinke of the taking away of light, and ayre,
 which cannot be amended, but remaineth a con-
 tinuall, and perpetuall nuisance as for the cases in
 19.E.3. which hath bin vouched so oft to make
 strongly against us, I take them to be one case,
 for so much as the Iustices which speake in one
 place, speake also in the other place, and last of
 all in both cases, the case was thus, an assise of nu-
 sance was brought, and the plaintiffe counted
 how the defendant had levied a house, so that
 thereby his light was stopped up, and that hee
 could not so well come to his house as he did be-
 fore, also that he could not repaire his house so
 well as he could before.

Here he said, as to the light be it a nuisance, such
 a one as it is. *Tiel. quel.* for the repaying none, for
 when a man buildeth, he must leave so much
 space on his owne ground that he may come to
 repaire his house, and if hee had thought that
 stoping of his light had bin no nuisance he would
 not have said, be it a nuisance *Tiel. quel.* but have
 said as he did to the other case of repaying, it
 is no nuisance. And therefore for the first matter,
 I thinke this to be a nuisance by the Common
 law.

As touching the second matter, whether this custome be a good custome or not, and I thinke the same is no good custome : For *consuetudo est in se. ut supra*, a custome is not against law, and reason, but this custome of yours is against reason, and is in effect, as if a man should take my life from me, for these be the instruments to maintaine, and preserve mans life, and the law saith, *sicuter et no, ut alienum non ledas*, therefore a custome against this precept, is *malus usus*, and therefore *abolendus*, as the case is 21. E. 4. If the Kings bailife or any other bailife distraine Cattell, and bring them to the Lords pound, and if the owner did not within three daies agree with the Lord, that then he should loose his Cattell, this was thought unreasonable and not allowed for any good custome. So in 9. H. 6. where there the Lord of a Leet would have prescribed to have all the waste ground, but he could not, because it was against reason, that he who had nothing in the Land should have the waists. Like unto the said case in the 35. H. 6. fo. 31. of pledging of goods, and such is that case in 43. E. 2. where the Lord of the Manor would have prescribed that none of his tenants should marry their daughters without his licence, this custome was thought to be against all equity, and reason. In 13. E. 3. in a *dum fuit infra etatem* one would have prescribed, that if the plantiffe could number 12 *d.* hee might *alien* his land by the custome: this is not a reasonable custome, for

for a man may be able to number ten and yet not have discretion enough to alien his land. So it is likewise against naturall reason, that one should barre me of my light, and ayre, without which I cannot live, and therefore these things be of necessity. Also it is against the law that one should meddle with the freehold of another man, unlesse it bee for a Common-wealth, as 8. E. 4. where one justified the setting in of stakes for to drie his nets, and likewise in the 11. H. 2. where one brought an action for taking or driving his Hogges, the defendant justified, because the custome of the Citty was, that if any mans Hogges came into the Citty, and upon warning given to the owners to keepe them out, if they came againe, that then they shall be forfeited. This is a reasonable custome, because swine are beasts that may cause diseases to bee in a Citty, and therefore it is against the Common-wealth in 22. E. 4. where it is sayd that a man may turne his plow upon another mans land, that is a good custome, for by this meanes no land shall be unfowne, wiche is for the maintenance of tillage, and the benefit of the Common-wealth. But this your custome is but a private custome, and not for the maintenance of the Common-wealth, and therefore is like unto the custome in 43. E. 3. that if the tenant cease to doe his service, the Lord may enter, this custome standeth not with the Common law, neither with the Statute which putteth

teth the Lord to his *cessavit*, and giveth him not
 any entry. So it is to bee thought of the cu-
 stome in *m. H. 4.* that the Tenants shall not put
 their beasts into the Common before the Lord
 hath put in his, which peradventure hee will
 never doe, so that the Tenants shall never have
 their Common. So it is if a man prescribe that
 the alienation of the Husband of the Lands of
 his Wife shall bee good without examination
 of her. Like law of the Custome in *43. E. 3.*
 that if any goods bee wayned in any manner,
 and if any man take them, that then it shall be
 lawfull for me to distraine, and detaine the di-
 stresse untill such time as I am satisfied: by these
 cases rehearsed it is manifest, and cleare that all
 usages against naturall reason, and the Com-
 mon law of this Realme, are not customes, but
 evill usages, and not to be allowed. So in our
 case a custome to take away a mans light, and
 ayre preservers of health, must needs be *malus*
usus, and therefore ought to bee taken away;
 For good usages stand with reason, and as
Bracton sayth, must give place to reason, and law.
 But you will say, that the law of your Citty is
 such: I say, if it stand not with reason, and law,
 it shall not bee allowed. As *10. E. 3.* in an ap-
 peale brought by a Cittizen, the defendant
 waged battaile, the Cittizen said the custome of
London is such, that a stranger should not wage
 battaile against a Cittizen, this was thought no
 good custome, nor sufficient, to deprive a man
 of

of a benefit, which the law giveth him. And so in 27. H. 6. in an action of debt upon a lease for yeeres, the defendant sayd that the custome was, that the plaintiffe should repaire the houses, and if not, that the defendant should pay no rent, this was thought to bee no custome allowable. For the third poynt, this is no beautifying at all to the City. In our case Mr. Hayles his house is an ancient house, and therefore against reason that by latter building, the commodity, and use of the same should be taken away. You say also that it is a thing honourable to have buildings in Citties; This I grant, and I thinke no man will deny it: but by building of one, to impaire a better house, this is not any beautifying, or honour at all to a Citty, but rather the contrary. For the fourth matter, if the custome be not good, this confirmation cannot make it good: for as I take the law, the common learning is, that a confirmation cannot make a voyde thing good: as for a confirmation *est firmum facere id quod non firmum fuit ante, sed fuit tamen* 26. H. 8. If an Infant grant an avou- son, and at his full age confirmeth the same, by this confirmation nothing is wrought. So it is in the case of 33. E. 3. where the lease for yeeres was made by a Bishop, and he died before the yeeres expired, the successor confirmeth the said lease, and *nihil operatur*. Likewise in 39. H. 6. the King granted an avou- son to one, and after granted the mannor with the advou- son to

another, and after the confirmation is made, yet the advouſon paſſeth not. But where the Statute limiteth, that men may deviſe unto corporations in Mortmaine, yet if they will deviſe to any that is not a corporation, it is without warrant. And alſo albeit a man may not wage his law in London, yet if at the Common law, an action be brought againſt him, he may: ſo it is of the caſe in 20. H. 6. that if one be brought before the Sherife, that the Mayor may diſmiſſe him, yet after judgement hee may not diſmiſſe him.

Likewiſe 12. E. 4. where one would have preſcribed to buy things without paying of tolle, that he could not be allowed. And therefore I will conclude that ſuch cuſtomes as ſtand with law, and reaſon, are to be allowed, and contrary ſuch as ſwerue from the rules of law, and reaſon, to be diſallowed. As this cuſtome of yours, that a man ſhould ſtop his neighbours lights is altogether unlawfull, and unreaſonable, and therefore the plaintiffe ought not thereby to be barred of his action.

Mr. Manwood.

Mr. Man-
wood his
Argument.

Here be two matters chiefly to be conſidered, whether by the Common law this bee a nuſance, to ſtop up part of a mans light, then if the Common law ſeeme to be doubtfull, whether the cuſtome will helpe us, or not, divers caſes

cases have beene put, when a man toucheth not the freehold of another, but on his owne land doth wrong unto another mans. But all these cases doe vary from our case, for they are where a man hath a private profit in a thing, and another by doing an act upon his owne land taketh away the same, wherefore an action will lie, as the case in 46. E. 3. where the Abbot of *Buckhurst* had Salmons, comming in at a sluice from the sea, and a stranger stopped the same, so that they could not come, and hee had his action. So it is where one taketh away my way, because this is a thing locall. And so if water running to my Mill, if one miscarry the same: generally wheresoever I have a private profit, or interest, and one barre mee of the same, it is injury: but the ayre is not any element locall, neyther may any man miscarry it, for it suffereth nothing to be voyd, also light, and ayre be not things of necessity, but of pleasure, and be not any profit in *certo loco*, and therefore not like unto other cases of things both profitable, and also necessary. The case of the ferry I will grant, that if I have a ferry to transport men, and another will erect another I sh^{ll} have an action, because that I am compellable to main- taine it, and the not keeping of it, is presen- table in a leete. The same law is of the market, where the King granteth an other market *ad nocumentum* of mine, I may have a *scire facias* to repeale his letters patents if he have these words

in them, that the grant should not bee to the hurt, or prejudice of any other market; and if not, I shall have an action on my case: your case was also compared to the case in 4.E.3. and 4. ass. pla. 3. where the ass. was maintained, not for that the plantiffe was annoyed by the smell of the smoke, but because his Apple-trees, and other his fruits were destroyed by the same, and this is a good reason, for that it is to his disinheri-
 tance. As for the case of the Limehouse at *Ratcliffe*, and the smoke of Smiths houses which cast many unfavoury smells, it is *damnum absq; injuria*. And I my selfe was by a Smith annoyed by the smell of his smoke, but yet might I not have any action against him. In 18. E. 3. one built an house so high that it dropped from his to mine, in this case an action will lie, for my tiles are thereby consumed, *gutta cavat lapidem*. So of the case in 2.H. 5. if by Common assent our houses joyne and a gutter is made betwixt us, if I plucke up my part, you may mainetaine an action against mee. All these cases hitherto put, have beene of taking away a locall commodity, or else of consuming something.

The case of the filth I finde not in my booke, but in the booke of Entries, and there it was *Per parietes*, so that the wals were hurt thereby. But I will agree with you, that if all your windowes were stopped, that an action will lie, and where you say *sic intere tuo ut alienum non laedat*,
 this

this is not meant of things of pleasure, but of things of profit. And here is not any part of your house consumed, but herein a let of your pleasure onely, for which your action is not mainetaineable. And if I have a Windmill, and another will build another by mine, I cannot have any action against him, 11. H. 4. 7. E. 3. 22. H. 6. But otherwise it is of a Watermilne, 9. assisar. pla. 19. where one had a Watermill, and another built neere unto him, so that he could not grinde so much as he was wonte, in this case a man may very well mainetaine his action. If I have an Inne, and another set another in the same towne, hee is not punishable, but if hee will stop my guesse, which come to my house, I shall have remedy. If I have a Brewhouse, and another build another by mine, I shall have no action. 12. H. 8. If water fall on my land, and I make a sluice, and let it out of my land unto an other mans; this is dispunishable, for every man may doe this one after another untill it come unto the River, but if it be a river, otherwise it is, For there it is *in loco certo*. If one house should not be adjoyning unto an other, it would be a great deformity, and if Cheap-side were so built, it would be a strange Cheap-side. And the civill lawes say that two lights on the former part, and backe of an house, are sufficient. And if you make your windowes into our garden, this is a wrong done unto us, for by this meanes I cannot talke with my friends

in my garden but your servant may see what I doe; and so the wrong first begun in Mr. *Hale*. And therefore *Vini vi repellere licet*. And I S hath not consumed, or hurt any part of his house, but interrupted him of his pleasure onely. But I further affirme, that for every hurt a man may not have an action, but if a man be oftentimes hurt, he may very well have an action. As if the Lord distraineth for rent, an action lyeth not, but if he distraine so oft that I cannot plow my land, I shall have an ass. So the Kings grant of exemption to one is good, but if it bee to divers, it is not good. But if the Common law would not helpe us, yet custome will, & whereas it hath beene sayd, that it is against naturall reason, and law, it is not so, *Consuetudo ex rationabili causa privat communem legem*, and unlesse it doe *privare communem legem*, it is no custome. As that an Infant of 15 yeeres age, may alien. For at this age he may consent to marriage, therefore in as great reason may he alien his lands: and in some places any Infant of 9 yeeres may binde himselfe apprentize, which is a good custome and standeth with reason. But some customes there are that be not good, As that the tennants shall not drive their beasts into the Common before the Lord hath put in his. So if the lessee will prescribe to surrender at his will, 7. H. 6. otherwise it is of the custome in the 14. H. 4. that the Tennant shall not alien without the presentment of the same before, this is a good custome

custome, and yet against common reason, but yet if it haue any taste, or smack of reason, it shall be allowed. As if the Lord prescribe that the tennant shall not Common with any beasts, but those which were bred on the same land, this is good, for this will cause the tennant to breed Cattell: likewise that a *feme sole Merchante* shall sue without her husband, this is good, and yet against Common law, and reason, because the husband hereby is discharged of all such busines: therefore if a custome have any part of reason, it shall be allowed. As 8. E. 3. that a man may make an estate to his wife during her life, and that should bee as good as an endowment *ad ostium ecclesie*. So is it of the custome of the Isle of Man, that to steale a Capon, or a Pigge, shall bee felony, and not to steale a horse, or cow, for that the one may bee hid, the other may not. Likewise is it, that the youngest sonne shall inherit, because he is lesse able to helpe himselfe. So is it of the custome of *Kent*, The father to the bough, the sonne to the plow, and yet directly against the Common law. So I thinke of the case of Hogs put by Mr. *Wray*, for that in the time of pestilence it is dangerous to let them come into Citties.

This Citty is the greatest Citty, and most populous in this Realme, and the more populous, the more honourable, & the more buildings, the more populous, and honourable will it be. And there-

therefore building is to be favoured. And by this building all his light is not stopped, but parcel. And Mr. *Hales* thereby looseth no not any great commodity, but is restrained of a little pleasure, for which hee cannot maintaine his action.

To the act of Parliament I will speake nothing, but this I will say, that if any custome be meereley voyd of reason, it is not good. As the custome in 5. H. 7. that if the Lord distraine the beasts of his tenants for rent, that he may detaine them untill he be satisfied at his pleasure; and 21. H. 7. that if any doe breake the pound he shall pay 3 l. this is a voyd, and unreasonable custome to binde an estranger, and yet by common consent of the Lord, and tenants, it is good to binde the tenants.

So if I prescribe that if any mans sheepe goe on my ground all the day, to have the foldage of them in the night, is a good custome, because by common entendment the owner hath *quid pro quo*. So our custome is for the maintenance of the Citty, neyther is it against the common law directly, neither hereby any offence, or hurt is done unto Mr. *Hales*, for his house is not thereby impaired. And therefore, I thinke his action will not lie.

Finis de ceux Arguments.



Resolutions of the

Judges of Assises,

1633.

I. *Question.*



Hether the Church-wardens, and Overseers of the poore of a parish with assent of two Iustices of the Peace, one being of the Quorum, may by the Statute of 43. *Elizabeth*, cap. 2. or any law enforce a parishioner of the same parish to take a child of a poore parishioner of the same parish, who is not able to keepe his sayd childe, to be an apprentice?

Resol. The Statute of 43. of *Elizabeth*, which sayth, that the Church-wardens and overseers of the parish shall put out children to be apprentices, necessarily implyeth, that such as are fit must receive apprentices, and the putting out of poore children to be apprentices is one

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of

of the best waies for the providing for the poore.

2. Q. If they may, then whether they must not give money with him, and who shall determine what money shall be given with him, if the party that is to take such an apprentice, and the Church-wardens, and Overseers cannot agree thereupon?

Resol. There is no necessity that money must be given, but that must be left to the discretion of the Church-wardens, and Overseers, all circumstances of age and ability, being considered, and if they cannot agree with the party, then the Iustices of Peace neere adjoyning, or in their default the Sessions of peace are to determine these controversies.

3. Q. Whether a Knight, Gentleman, Clergie-man, or Yeoman, or one that is Sojourner, using husbandry, cloathing, or grasing, or the like, may bee enforced to take such an apprentice?

Resol. Every man who is by calling or profession or manner of living, that entertaineth, and must have the use of other servants of the like quality, must entertaine such apprentices, wherein discretion must bee given upon due consideration of circumstances.

4. Q. Whether a wealthy man keeping few or no servants, nor wanting a servant, but living

ving privately may be enforced to take such an apprentice; if not, then whether hee may bee taxed towards the putting forth of such an apprentice?

Resol. For the receiving of such apprentices, the answer may be referred to the question next before; but out of doubt every such person must contribute to the charge, as to other charges for the provision for the poore.

5. Q. Whether they may enforce a parishioner that is of one parish, to take such a childe, apprentice, that is of another parish, but within the same County or division, if the proper parish be not able to provide for the children of the same parish?

Resol. The Iustices may provide Masters for them in other parishes within the same hundred; if the same hundred be not able, then out of that hundred in the rest of that County; As for other provision for the poore, which must be at a quarter Sessions.

6. Q. If such a parishioner may be enforced to take such an apprentice, and shall refuse not onely to take such an apprentice, but also refuse to be bound to appeare at the next quarter Sessions, or Assizes, what shall be done to him?

Resol. If any refuse; let such a one be bound over to the next Sessions or Assizes; if he refuse to give such bond, let him be sent to

the *Gaole*, there to remaine untill he will give such bond.

7. Q. If such a parishioner who refuseth to take such an apprentice shall be bound over to the Sessions for not taking such an apprentice, and when he appeareth there, shall likewise refuse, what shall be done to him, and what shall be done unto the parents who refuse to suffer their children to be put out to bee apprentices, themselves not being able to main-
taine them?

Resol. If at the Sessions or Assizes such a one refuseth to take an apprentice & his excuse be not allowed, it is fit he bee bound to the good behaviour, and it will be a good course to indict such a refuser for a contempt, and thereupon to fine & imprison him; if he refuse to be bound to the good behaviour, let him be imprisoned untill he will; & the Kings book of orders directs that such be bound with good sureties to appeare at the Councell board; & if the parents of such poore children refuse to suffer their children to be bound apprentices, or being bound, entice them away, themselves not being able to mainetaine them, let them be committed to the house of correction.

8. Q. whether it be in the power of any generall quarter Sessions to mitigate any penalty upon a Statute law; If the party indicted shall submit himselfe to the fine of the Court, and waive the traverse?

Resol.

Resol. If the party be convicted or confesse the fault, it is not in the Power of the Court to mitigate the fine, in such cases where the Statute makes it certaine: but if the party indicted protesting his Innocency, yet *quia noluit placitare cum domino Rege* puts himselfe up into the grace of the Court, the Court may impose a moderate fine, and order to forbear the prosecution.

9. Qu. If any be bound to appeare at the Sessions, and shall tender submission to the Court, whether the Sessions may stay the indictment, and mitigate the fine aforesayd upon the confession of the fact?

Resol. This is answered before to the next precedent Article.

10. Q. If a man be convicted for being drunk, tipling, and keeping an unlicensed Alehouse, or being licenced, for suffering others to remaine tipling in his house, or for swearing or driving Cattell upon the Sunday contrary to the Statute in that case provided: whether the Iustice of peace, before whom he was convicted, or any other Iustice of the peace may discharge him of all or part of the forfeiture or punishment appoynted by the Statute?

Resol. The Iustices have no such power of mitigation after conviction, where the Statute appoynts the measure of the punishment.

11. Qu. Whether a Constable may upon a warrant for carrying one to the house of correction for keeping an unlicensed Alehouse upon the second conviction breake open the house wherein the party convicted is, to apprehend him?

Resol. This question is to be advised upon, it is put in generall termes and referred to be considered in the particular where it appeareth.

12. Qu. If a woman unmarried be hired from weeke to weeke, or from halfe yeere to halfe yeere, in one parish, and there is gotten with child, and then goeth from thence unto another parish, where shee is settled in service by the space of two or three moneths, and then discovered that she is with child: The question is, whether she shall be settled in the parish where she was begotten with child, or in the parish where she was last settled?

Resol. The place where such a woman was lawfully settled is the direction in this case, not where shee was begotten with child.

13. Qu. If a woman-servant unmarried bee begotten with child, and then goeth out of her Mistres service, before or after it is discovered that she is with child, and the reputed father be runne away, or is not able to free the parish: whether the Master may be enforced to provide for her till she be delivered, and for a moneth after?

Resol.

Resol. If the Master hath legally discharged his house of such a servant, hee is no more bound to provide for her then any other.

14. Qu. In case a parish consist part of ancient *Demeasne*, and part of *Guildable*, an assise is made for the reliefe of the maimed Souldiers, the Gaole, &c. according to the Statute of 24. *Elizabeth*, cap. 2, whether the tenants in ancient demesne shall contribute with the Guildable for the payment of the Assize?

Resol. The Statute doth not distinguish betweene the ancient demesne and the Guildable in these cases, *ubi lex non distinguitur, ibi nec nos distinguimus.*

15. Q. Whether an Indictment of forceable detainer be within the Statute of 1. *Iacobi*, cap. 5. and not to be removed by *Certiorari*, unless the party indicted first finde sureties according to that Statute, and whether the party Indicted be to be bound in his absence to prosecute according to that Statute, and whether an Indictment of forcible entrie, &c. found at a private Sessions be to be removed by *Certiorari* without sureties, according to that Statute?

Resol. This is fittest to be left unto the Court of Kings-bench to whose commission, and jurisdiction this is most proper.

16. Q. If one be convicted upon the Statute of 3. *Car. R.* cap. 13. for driving of Cattell on

on the Sunday through severall parishes; whether he shall forfeit 20 s. to every of the sayd parishes, or onely to one; if to one, then to which of them?

Resol. This Statute giveth the forfeiture but of one 20 s. for one Sabbath day. Although the driving on that day be through divers parishes. Therefore where the action is first attached, and the distresse first taken, that parish shall have the benefit of the forfeiture, and not the other.

17. *Qu.* If one who is under the age of 30. yeeres, and brought up in husbandry, or a mayd-servant, or brought up in any of the arts or trades mentioned in the Statute of 5. *Elizab.* c. 4. and not enabled according to that Statute, to live at his or her owne hand, shall be warned by two Iustices of the peace to put him or herselfe in service by a day prescribed by them, and shall not doe the same accordingly, but shall after continue living at his or her owne hand, what course shall bee taken with such a person, and how punished?

Resol. Such persons being out of service, and not having visible meanes of their owne, to mainetaine themselves without their labour, and refusing to serve as an hired servant, by the yeere, may be bound over to the next Sessions or Assises and to be of the good behaviour in the meane time, or may be sent to the house of correction.

18. Q. Whether the taxe for the reliefe of the poore, upon the Statute of 43. Elizabeth, shall bee made by ability or occupation of lands, or both, and whether the visible ability in the parish where hee lives; or generall ability wheresoever, and whether his rent received, within the parish where he lives shall bee accounted visible ability, and whether hee shall bee taxed of them onely and for any rents received from other parishioners: land what shall be sayd visible ability?

Resol. The land within each parish is to bee taxed to the charges in the first place equally and indifferently, but there may be an addition for the personall visible ability of the parishioner within that parish according to good discretion, wherein if there be any mistaking, the Sessions, &c. or the Justice must Iudge betweene them.

19. Q. Whether shops, salt pits, sheds, profits of a market, &c. be taxable to the poore as well as lands, Cole-mynes, &c. expressed in the Statute 43. Elizabeth?

Resol. All things which are reall, and a yeerely revenue, must be taxed to the poore.

20. Q. Whether the taxe for the County stocke, Gaole, and house of correction is to be made by the Statute of 14. Elizabeth, cap. 43. Elizabeth: by ability, and upon the Inhabitants of the parish onely, or upon

them or the occupiers of lands, dwelling in that parish: or whether such as occupy lands in that parish, and dwell in an other parish shall be taxed?

Resol. If the Statute in particular cases give no speciall direction, it is good discretion to goe according to the rate of taxation for the poore: but when the Statutes themselves give directions, follow that.

21. Q. Whether any taxes ought to be made for the charges that petty Constables and Bor-shoulders are at in conveying rogues from parish to parish, and relieving of them and how to be rated?

Resol. It is fit to relieve the Constable and Tything-men, in such sort as it hath beene used in the severall places where they live.

22. Q. Whether a Iustice of peace may discharge a servant being with childe from her service, allowing that as a reasonable cause that she is thereby made unable to doe the service which otherwise she might have done, & if he may discharge her, whether that parish shall provide for her, till her delivery, if she cannot provide for her selfe: and so also if her time be expired before her delivery, who shall provide for her after her time ended?

Resol. If a woman being with childe procure herselfe to bee retained with a Master who knoweth nothing thereof, is a good cause to discharge her from his service. And if shee bee
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begotten with childe during her service, it is all one, but the Master in neither case must turne away such a servant of his owne authority. But if her terme be ended, or she lawfully discharged; the Master is not bound to provide for her, but it is a misfortune fallen upon the parish, which they must beare, as in other cases of casuall impotency.

23. *Qu.* Whether being delivered of a bastard child in one parish, and goeth into another with her childe; and becomes vagrant, and so is sent to the place of her birth: her bastard childe being under the age of 7. yeeres, shall be settled with the mother, & there maintained, if the mother be not able, nor the reputed father knowne, found: or whether it shall be sent to the place of its birth, or being settled with the mother, whether the parish where it was borne, shall bee ordered by the two next Iustices to pay a weekly summe towards the maintenance of it?

Resol. The bastard childe must bee placed with the mother, so long as it is within the quality or condition of a nurse childe, which shall be, till seven yeeres of age; and then it is fit to be sent to the place of its birth to be provided for, the mother, or reputed father not being able. And the parish where the childe is borne shall not bee forced to contribute to the charge, as long as the mother lives, and the child be under 7 yeeres old.

24. Q. A man with his wife and children takes an house in one parish, for a yeere : and before the end of his terme is unlawfully put out of possession, and after taketh part of an house, as an Inmate in another parish, from whence he is also put out, and then not being able to get any dwelling, they come to lye in a Barne in a third parish where the husband falleth sicke, and the wife is delivered of another childe, where ought these to bee settled?

Resol. If a man or woman having house or habitation in one parish be thrust out this is an illegall unsettling which the law forbiddeth, for none must be enforced to turne vagrant, and such one must be returned to the place where hee or shee was last lawfully settled, and the Childe also borne in the time of this distraction.

25. Q. Whether an apprentice put out by the Churchwardens, &c. according to the Statute to a Master in another parish, if his Master die and leave no Executor or Administrator fit to keepe an apprentice or able to place him : He shall be provided for in the parish where hee was apprentice or shall bee sent backe to the parish from whence he was put out?

Resol. Servants and apprentices are by law settled in that parish, and if they become impotent there, the parish must abide the adventure,

ture after their terme or time of service be lawfully ended.

26. Q. What is accounted a lawfull settling in a parish, and what not?

Resol. This is too generall a question to receive a perfect answer to every particular case which may happen; but generally this is to be observed, that the law unsettleth none who are lawfully settled; nor, permits it to be done by practice, or compulsion, and every one who is settled is a native householder, sojourner, an apprentice or servant for a moneth at the least, without a just complaint made to remove him or her, shall be held to be settled.

27. Q. A rogue is taken at C. and will not confesse the place of his birth: neyther doth it appeare otherwise but that he confesseth the last place of his habitation to be at S. hereupon he is whipped and sent to S. at his comming to S. the place of his birth is there knowne by some to be at W. and thereupon the rogue confesseth it to be so: whether he might without any new vagrancy be sent to W?

Resol. In this case it is fit to send such a rogue to the place of his birth: for this is but a mistaking and no legall settling.

28. Q. If an Indictment be preferred to the grand Iury of the quarter Sessions of the peace against one for murder, manslaughter, for robbery, felony, or Petilarceny, and ignoramus found therupon, whether the said Sessions may deliver the party by proclamation or not?

Resol.

Resol. Not by Proclamation at all, but for petty Lacenyas, and other petty felonies; in discretion the Gaole may be delivered of them.

29. Q. If a constable be chosen, and refuseth to take his oath, what shall be done, and whether a Constable may make a deputy and by what meanes?

Resol. The refusall or neglect to take oath in such a case is a contempt worthy of punishment, and thereupon to fine, and imprison him, and the making of a deputy is rather by toleration, then by law.

30. Q. If a Constable dye or remove out of the parish where, &c. how is his place to be supplied?

Resol. By the Lord of the Leete, if that time fall neere, otherwise by the Sessions, but if that bee too farre off, then by the next Iustices.

31. Q. If a poore weake man be chosen Constable or Tythingman, and bee unfit for the place, how may he be removed, and a fit man sworne in his roome?

Resol. The Iustices of peace must helpe this, and if the Lord of the Leete have power to choose a Constable, or Tything-man and performe so ill, it is a just cause to seize his liberty.

32. Q. If a nurse-childe, a Scholler at a Grammar-schoole, or in the University prove
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to be impotent by sicknesse, lamenesse, lunacy, or discovery of Ideocy; &c. how such persons shall be disposed?

Resol. A nurse-childe or a scholler at the Grammar-schoole, or at the Vniversity, or persons sent to the Common gaole, Hospitall, or houses of correction, are not to be esteemed as persons to be settled there, more then travellers in their Innes, but their settling is where their parents are settled; and children borne in common Gaoles, and houses of correction, their parents being prisoners, are to be maintained at the charge of the County.

33. Qu. What proportion Parsonages or tithes shall beare to the taxation of the poore of the parish?

Resol. The Parson or Vicar presentative, shall according to the reasonable value of his Parsonage, having consideration to the just deductions.

34. Q. Whether for the placing the poore of the parish, not to be removed by consent of the parish, these poore men may not be placed as Inmates for a time?

Resol. They may by expresse words of the Statute of the 43. of Elizabeth.

35. Q. If a parishioner or owner within a parish doe bring into the parish without the consent of the parish a stranger of another parish, which is or apparantly is like to bee burthensome unto the parish, how they may ease themselves?

Resol.

Resol. By taxing such a one to the charge of the rates of the poore, not onely having respect to his ability or the land he occupies, but according to the damage and danger he bringeth to the parish by his folly.

36. *Qu.* For warding in the day time, for apprehending of rogues, whether the Constable may not enlarge it to a farther time?

Resol. Warding in the day time is of great use, and must bee left to the discretion of the Constables or direction of the Iustices to vary according to the occasion.

37. *Q.* Whether Alehouses ought to be allowed onely in thorowfare Townes, and others in other places to be restrained onely to sell to the poore out of doores.

Resol. The Iustices shall doe very well to allow none but in places very fit for their scituation and uses, and to moderate the number.

38. *Q.* A man for his quality otherwise fit to be a Constable, or of other Office of that nature procures himselfe to be the Kings servant extraordinary, and by that meanes would excuse himselfe to serve in the Country.

Resol. A servant extraordinary may well performe his ordinary service in the Country according to his quality.

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The Iustices opinion touching the Commissions by which the Iustices sit at Newgate.



THE Iustices at Newgate sit by vertue of two Commissions (viz.) Gaole delivery and Oyer and determiner.

By the Commission of Gaole delivery they may try all prisoners in the Gaole, or by bayle, or such as be indicted will render themselves, generally for all felonies: and also for such other offences as are particularly assigned to them by Statute.

The Statute of 4. *Elizabeth* 3. cap. 2. doth give them power to receive Indictments against prisoners or such as are upon baile, and to proceede to try the same (viz.) Indictments taken before the Iustices of the peace, and by equity thereof all Indictments before coroners 3. *Mar. Bro. Commission. omnium*. 24. saith, that the Commission is *ad deliberand. Gaol. de prison. in eisdem existens*. But they cannot take Indictments as Iustices of Gaole delivery, but being Iustices of the peace, they may take Indictments against prisoners, but not against them that bee at large, for asmuch as power

Anciently felonies included all trespasses, therefore the Iustices of Gaole delivery have power to hold plea of trespasses against them in prison or upon bayle to render themselves.

v. 1. *Mar. Dyer*, 99. Iustices of Gaole delivery hold pleas of all appeales of felony or murder against one in prison by their generall Com. and of appeales: so

by the same reason to take Indictments.

is given them, consequently they must have means to doe so, which is by Indictments, *Id quær.*

Howsoever it is cleere that they may enquire of many offences and take Indictments in such cases where power by the Statute is given to the Iustices of Gaole delivery in such cases where they have authority by Law or Statute there the title of Indictments is that *ad gaolam deliberationem tent.* before the Commissioners of Gaole delivery, I. S. was indicted, and the record must be made up so.

And whereas by the Statute 4. E. 3. cap. 2. Indictments taken before Iustices of peace or Coroners or any other against any prisoners, then the entry of the Indictments is returned taken, *Memorand. quod ad generalem Sessionem tent.* before A. B. C. &c. Iustices *ad pacem in Com. Middlesex* or *London* I. S. was indicted, and then tryed before Iustices of Gaole delivery, and by vertue of the sayd Statute Indictments taken before Iustices of the peace of *London* or *Middlesex*, and tryed before the Iustices of Gaole delivery.

The Commission of Oyer and Terminer is *ad triand. inquirend. audiend. et determinand.* they may enquire of all offences mentioned in the Commission, albeit the offenders bee at large but they cannot try prisoners upon Indictments taken before any other then themselves, as the Iustices of Gaole delivery may by the

the aforefayd Statute, unlesse there be a speciall Commission made, as it was in the case of the Earle of Leicester, mentioned in *Plow. Com.* ^{3. Mar. Bro. Com. 24.} for the ordinary Commission of Oyer, and terminer is *ad inquirend. audiend. et determinand.* therefore they cannot determine of things unlesse they made enquire first, and on the other side also the Iustices of Goale delivery may trie indictments taken before Iustices of the peace, yet if one indicted before Commissioners of Oyer and Terminer, the Iustices of Goale delivery cannot try the same, because the Record of the Commission of Oyer and Terminer are to bee returned in the Kings Bench. 44 E. 3. 31.

The Commission and the Records of the proceedings before the Iustices of Goale delivery, are to be returned to the Custos Rotulor. of the Countie, when the same persons are Iustices of Goale delivery, and of Oyer and Terminer, they may sit the same day and place and enquire by the same Iurie, but the entry of the Records must be severall, according as the Indictment is.

At the Assizes in the Countrey, the Iustices have their severall power as the Iustices of Goale delivery Oyer and Terminer, and Iustices of the peace.

But when the records are made up, they must bee according to the power they made election to proceed upon.

This is the regular and legall course. But the Clerkes of the Assizes promiscuously make entry thereof, But if a Writ of Error bee brought, they must certifie according to Law, or else it will be erroneous, and so upon a Certiorari.

The Sessions of London may be begun at the Guildhall, and then adjourned to Newgate, if some Indictments bee at Guildhall, then those must bee so certified: if others at Newgate, then the adjournment must bee mentioned, and that the Indictment was then taken.

Note that the tryall of Indictments taken before Iustices of the peace of London, cannot be tryed at Newgate, as in nature of a tryall before Iustices of the peace at London, for many of the Commissioners, for Gaole delivery, are not Iustices of the peace for London, but in such cases the tryall must be before the Iustices of Gaole delivery: as upon Indictments taken before the Iustices of peace of London; as in the case of Indictments taken before the Iustices of peace of Middlesex.

But if indictments at Newgate be originally taken before them, as Iustices of Gaole delivery, then it is enquirable how the Iury sworne, and impannelled to enquire at the Sessions of the peace for London, or Middlesex, doe serve to present Indictments before the

the Iustices of Gaole delivery at Newgate, unless the custome and usage will warrant, the two severall Iuries, sworne at the Sessions of the peace for London, or Middlesex, are also by the same oath and impannelling to serve for the grand Iury for the Commission of Gaole delivery, and Oyer, and Terminer.

Upon conference with Mr. Keeling, and the Clerkes for Newgate of London, and Middlesex, and the Clerkes of Assizes, and view of the severall entries, a more mature, and certaine resolution may be given, this being in hast, and without such considerations as were requisite.

FINIS.
